

112TH CONGRESS
2D SESSION

H. R. 5284

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

IN THE HOUSE OF REPRESENTATIVES

APRIL 27, 2012

Mr. REICHERT (for himself and Mr. THOMPSON of California) introduced the following bill; which was referred to the Committee on Ways and Means, and in addition to the Committee on Energy and Commerce, for a period to be subsequently determined by the Speaker, in each case for consideration of such provisions as fall within the jurisdiction of the committee concerned

A BILL

To amend section 1862 of the Social Security Act with respect to the application of Medicare secondary payer rules to workers' compensation settlement agreements and Medicare set-asides under such agreements.

1 *Be it enacted by the Senate and House of Representa-*
2 *tives of the United States of America in Congress assembled,*

3 **SECTION 1. SHORT TITLE.**

4 This Act may be cited as the “Medicare Secondary
5 Payer and Workers’ Compensation Settlement Agree-
6 ments Act of 2012”.

1 **SEC. 2. APPLICATION OF MEDICARE SECONDARY PAYER**
 2 **RULES TO CERTAIN WORKERS' COMPENSA-**
 3 **TION SETTLEMENT AGREEMENTS AND**
 4 **QUALIFIED MEDICARE SET-ASIDE PROVI-**
 5 **SIONS.**

6 (a) THRESHOLD FOR SECONDARY PAYER PROVI-
 7 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-
 8 MENT AGREEMENTS.—Section 1862 of the Social Security
 9 Act (42 U.S.C. 1395y) is amended—

10 (1) in subsection (b)(2)(A)(ii), by inserting
 11 “subject to subsection (p),” after “(ii)”; and

12 (2) by adding at the end the following new sub-
 13 section:

14 “(p) THRESHOLD FOR SECONDARY PAYER PROVI-
 15 SIONS FOR CERTAIN WORKERS' COMPENSATION SETTLE-
 16 MENT AGREEMENTS.—

17 “(1) IN GENERAL.—A workers' compensation
 18 law or plan shall not be treated as a primary plan
 19 for purposes of subsection (b) with respect to a
 20 workers' compensation settlement agreement if the
 21 agreement (or claimant under the agreement) is de-
 22 scribed in any of the following subparagraphs:

23 “(A) TOTAL SETTLEMENT AMOUNT NOT
 24 EXCEEDING \$25,000.—The agreement has a
 25 total settlement amount (as determined under
 26 paragraph (2)) that does not exceed \$25,000 or

1 such greater amount as the Secretary may
2 specify in regulations.

3 “(B) LIKELY INELIGIBILITY OF WORKERS’
4 COMPENSATION CLAIMANT FOR MEDICARE BEN-
5 EFITS.—The claimant under the agreement—

6 “(i) is not eligible for benefits under
7 this title as of the effective date of the
8 agreement; and

9 “(ii) is unlikely to become so eligible,
10 as determined under paragraph (3), within
11 30 months after such effective date.

12 “(C) NO FUTURE MEDICAL EXPENSES.—
13 The claimant under the agreement is not eligi-
14 ble for payment of medical expenses, incurred
15 after the effective date of the agreement, that
16 are available under the workers’ compensation
17 law or plan of the jurisdiction in which such
18 agreement will be effective.

19 “(D) NO LIMITATION ON FUTURE MEDICAL
20 EXPENSES.—The agreement does not limit or
21 extinguish the right of the claimant involved to
22 payment of medical expenses, incurred after the
23 effective date of such agreement, that are avail-
24 able under the workers’ compensation law or

1 plan of the jurisdiction in which the agreement
2 will be effective.

3 “(2) DETERMINATION OF TOTAL SETTLEMENT
4 AMOUNT OF WORKERS’ COMPENSATION SETTLE-
5 MENT AGREEMENT.—For purposes of paragraph
6 (1)(A) and subsection (q) and with respect to a
7 work-related injury or illness that is the subject of
8 a workers’ compensation settlement agreement, the
9 total settlement amount of the agreement is the sum
10 of monetary wage replacement benefits, attorney
11 fees, all future medical expenses, repayment of Medi-
12 care conditional payments, payout totals for annu-
13 ities to fund the expenses listed above, and any pre-
14 viously settled portion of the workers’ compensation
15 claim.

16 “(3) DETERMINATION OF LIKELY INELIGI-
17 BILITY OF CLAIMANT FOR MEDICARE BENEFITS.—
18 For purposes of paragraph (1)(B)(ii), a workers’
19 compensation claimant shall be deemed unlikely to
20 become eligible for benefits under this title within 30
21 months after the effective date of the agreement un-
22 less, as of the effective date of the agreement, such
23 claimant is insured, as determined under subsection
24 (c)(1) of section 223, for disability insurance bene-

1 fits under such section and is described in any of the
2 following subparagraphs:

3 “(A) AWARDED DISABILITY BENEFITS.—
4 The individual has been awarded such disability
5 insurance benefits.

6 “(B) APPLIED FOR DISABILITY.—The indi-
7 vidual has applied for such disability insurance
8 benefits.

9 “(C) ANTICIPATES APPEAL.—The indi-
10 vidual has been denied such disability insurance
11 benefits but anticipates appealing that decision.

12 “(D) APPEALING OR REFILING.—The indi-
13 vidual is in the process of appealing or refiling
14 for such disability insurance benefits.

15 “(E) MINIMUM AGE.—The individual is at
16 least 62 years and 6 months of age.

17 “(F) END-STAGE RENAL DISEASE.—The
18 individual has an end-stage renal disease condi-
19 tion but does not yet qualify for health benefits
20 under section 226A based on such disease.

21 “(4) DEFINITIONS.—For purposes of this sub-
22 section and subsection (q):

23 “(A) COMPROMISE AGREEMENT.—The
24 term ‘compromise agreement’ means a workers’
25 compensation settlement agreement that—

1 “(i) applies to a workers’ compensa-
2 tion claim that is denied or contested, in
3 whole or in part, by a workers’ compensa-
4 tion payer involved under the workers’
5 compensation law or plan applicable to the
6 jurisdiction in which the agreement has
7 been settled; and

8 “(ii) does not provide for a payment
9 of the full amount of benefits sought or
10 that may be payable under the workers’
11 compensation claim.

12 “(B) COMMUTATION AGREEMENT.—The
13 term ‘commutation agreement’ means a work-
14 ers’ compensation settlement agreement to set-
15 tle all or a portion of a workers’ compensation
16 claim, in which—

17 “(i) liability for past and future bene-
18 fits is not disputed; and

19 “(ii) the parties to the agreement
20 agree to include payment for future work-
21 ers’ compensation benefits payable after
22 the date on which the agreement becomes
23 effective.

1 “(C) WORKERS’ COMPENSATION CLAIM-
2 ANT.—The term ‘workers’ compensation claim-
3 ant’ means a worker who—

4 “(i) is or may be covered under a
5 workers’ compensation law or plan; and

6 “(ii) submits a claim or accepts bene-
7 fits under such law or plan for a work-re-
8 lated injury or illness.

9 “(D) WORKERS’ COMPENSATION LAW OR
10 PLAN.—

11 “(i) IN GENERAL.—The term ‘work-
12 ers’ compensation law or plan’ means a
13 law or program administered by a State or
14 the United States to provide compensation
15 to workers for a work-related injury or ill-
16 ness (or for disability or death caused by
17 such an injury or illness), including the
18 Longshore and Harbor Workers’ Com-
19 pensation Act (33 U.S.C. 901–944, 948–
20 950), chapter 81 of title 5, United States
21 Code (known as the Federal Employees
22 Compensation Act), the Black Lung Bene-
23 fits Act (30 U.S.C. 931 et seq.), and part
24 C of title 4 of the Federal Coal Mine and
25 Safety Act (30 U.S.C. 901 et seq.), but not

1 including the Act of April 22, 1908 (45
2 U.S.C. 51 et seq.) (popularly referred to as
3 the Federal Employer’s Liability Act).

4 “(ii) INCLUSION OF SIMILAR COM-
5 PENSATION PLAN.—Such term includes a
6 similar compensation plan established by
7 an employer that is funded by such em-
8 ployer or the insurance carrier of such em-
9 ployer to provide compensation to a worker
10 of such employer for a work-related injury
11 or illness.

12 “(E) WORKERS’ COMPENSATION PAYER.—
13 The term ‘workers’ compensation payer’ means,
14 with respect to a workers’ compensation law or
15 plan, a workers’ compensation insurer, self-in-
16 surer, employer, individual, or any other entity
17 that is or may be liable for the payment of ben-
18 efits to a workers’ compensation claimant pur-
19 suant to the workers’ compensation law or plan.

20 “(F) WORKERS’ COMPENSATION SETTLE-
21 MENT AGREEMENT.—The term ‘workers’ com-
22 pensation settlement agreement’ means an
23 agreement, including a commutation agreement
24 or compromise agreement, or any combination
25 of both, between a workers’ compensation

1 claimant and one or more workers' compensa-
 2 tion payers which is intended—

3 “(i) to foreclose the possibility of fu-
 4 ture payment of some or all workers' com-
 5 pensation benefits involved; and

6 “(ii)(I) to compensate the claimant
 7 for a work-related injury or illness as pro-
 8 vided for by a workers' compensation law
 9 or plan; or

10 “(II) to eliminate cause for litigation
 11 involving issues in dispute between the
 12 claimant and payer.”.

13 (b) SATISFACTION OF SECONDARY PAYER REQUIRE-
 14 MENTS THROUGH USE OF QUALIFIED MEDICARE SET-
 15 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT
 16 AGREEMENTS.—Such section is further amended by add-
 17 ing at the end the following new subsection:

18 “(q) TREATMENT OF QUALIFIED MEDICARE SET-
 19 ASIDES UNDER WORKERS' COMPENSATION SETTLEMENT
 20 AGREEMENTS.—

21 “(1) SATISFACTION OF SECONDARY PAYER RE-
 22 QUIREMENTS THROUGH USE OF QUALIFIED MEDI-
 23 CARE SET-ASIDES.—

24 “(A) FULL SATISFACTION OF CLAIM OBLI-
 25 GATIONS.—

1 “(i) IN GENERAL.—If a workers’ com-
2 pensation settlement agreement, related to
3 a claim of a workers’ compensation claim-
4 ant, includes a qualified Medicare set-aside
5 (as defined in paragraph (2)), such set-
6 aside shall satisfy any obligation with re-
7 spect to the present or future payment re-
8 imbursement under subsection (b)(2) with
9 respect to such claim. The Secretary shall
10 have no further recourse, directly or indi-
11 rectly, under this title with respect to such
12 agreement.

13 “(ii) RULE OF CONSTRUCTION.—
14 Nothing in this section shall be construed
15 as requiring the submission of a Medicare
16 set-aside to the Secretary.

17 “(B) MEDICARE SET-ASIDE AND MEDI-
18 CARE SET-ASIDE AMOUNT DEFINED.—For pur-
19 poses of this subsection:

20 “(i) MEDICARE SET-ASIDE.—The
21 term ‘Medicare set-aside’ means, with re-
22 spect to a workers’ compensation settle-
23 ment agreement, a provision in the agree-
24 ment that provides for a payment of a
25 lump sum, annuity, a combination of a

1 lump sum and an annuity, or other
2 amount that is in full satisfaction of the
3 obligation described in subparagraph (A)
4 for items and services that the workers'
5 compensation claimant under the agree-
6 ment received or is likely to receive under
7 the applicable workers' compensation law
8 and for which payment would be made
9 under this title, but for subsection
10 (b)(2)(A).

11 “(ii) MEDICARE SET-ASIDE
12 AMOUNT.—The term ‘Medicare set-aside
13 amount’ means, with respect to a Medicare
14 set-aside, the amount described in clause
15 (i).

16 “(2) QUALIFIED MEDICARE SET-ASIDE.—

17 “(A) REQUIREMENTS OF QUALIFIED MEDI-
18 CARE SET-ASIDE.—For purposes of this sub-
19 section, the term ‘qualified Medicare set-aside’
20 is a Medicare set-aside in which the Medicare
21 set-aside amount reasonably takes into account
22 the full payment obligation described in para-
23 graph (1)(A), while meeting the requirements of
24 subparagraphs (B) and (C) and giving due con-
25 sideration to the following:

1 “(i) The illness or injury giving rise to
2 the workers’ compensation claim involved.

3 “(ii) The age and life expectancy of
4 the claimant involved.

5 “(iii) The reasonableness of and ne-
6 cessity for future medical expenses for
7 treatment of the illness or injury involved.

8 “(iv) The duration of and limitation
9 on benefits payable under the workers’
10 compensation law or plan involved.

11 “(v) The regulations and case law rel-
12 evant to the State workers’ compensation
13 law or plan involved.

14 “(B) ITEMS AND SERVICES INCLUDED.—A
15 qualified Medicare set-aside—

16 “(i) shall include payment for items
17 and services that are authorized for pay-
18 ment under this title as of the effective
19 date of the workers’ compensation settle-
20 ment agreement involved and that are cov-
21 ered by the workers’ compensation law or
22 plan involved; and

23 “(ii) is not required to provide for
24 payment for items and services that are
25 not described in clause (i).

1 “(C) PAYMENT REQUIREMENTS.—

2 “(i) REQUIRED USE OF WORKERS’
3 COMPENSATION FEE SCHEDULE.—

4 “(I) IN GENERAL.—Except in the
5 case of an optional direct payment of
6 a Medicare set-aside made under
7 paragraph (5)(A), the set-aside
8 amount shall be based upon the pay-
9 ment amount for items and services
10 under the workers’ compensation fee
11 schedule (effective as of the date of
12 the agreement) applicable to the work-
13 ers’ compensation law or plan in-
14 volved.

15 “(II) WORKERS’ COMPENSATION
16 FEE SCHEDULE DEFINED.—For pur-
17 poses of this subsection, the term
18 ‘workers’ compensation fee schedule’
19 means, with respect to a workers’
20 compensation law or plan of a State
21 or a similar plan applicable in a State,
22 the schedule of payment amounts the
23 State has established to pay providers
24 for items and services furnished to
25 workers who incur a work-related in-

1 jury or illness as defined under such
2 law or plan (or in the absence of such
3 a schedule, the applicable medical re-
4 imbursement rate under such law or
5 plan).

6 “(ii) OPTIONAL PROPORTIONAL AD-
7 JUSTMENT FOR COMPROMISE SETTLEMENT
8 AGREEMENTS.—

9 “(I) IN GENERAL.—In the case
10 of a compromise settlement agree-
11 ment, a workers’ compensation claim-
12 ant or workers’ compensation payer
13 who is party to the agreement may
14 elect (but is not required) to calculate
15 the Medicare set-aside amount of the
16 agreement by applying a percentage
17 reduction to the Medicare set-aside
18 amount for the total settlement
19 amount that could have been payable
20 under the applicable workers’ com-
21 pensation law or similar plan involved
22 had the denied or contested portion of
23 the claim not been subject to a com-
24 promise agreement. The percentage
25 reduction shall be equal to the denied

1 or contested percentage of such total
2 settlement. Such election may be
3 made by a party to the agreement
4 only with the written consent of the
5 other party to the agreement.

6 “(II) APPLICATION.—If the
7 workers’ compensation claimant or
8 workers’ compensation payer elects to
9 calculate the Medicare set-aside
10 amount under this clause, the Medi-
11 care set-aside shall be deemed a quali-
12 fied Medicare set-aside.

13 “(D) CERTAIN MEDICARE SET-ASIDES
14 WITH SAFE HARBOR AMOUNT DEEMED QUALI-
15 FIED MEDICARE SET-ASIDES.—

16 “(i) IN GENERAL.—For purposes of
17 this section and subject to clause (iv), a
18 Medicare set-aside of a workers’ compensa-
19 tion settlement agreement shall be deemed
20 a qualified Medicare set-aside if the Medi-
21 care set-aside amount involved is the safe
22 harbor amount for the agreement and the
23 agreement does not exceed \$250,000.

24 “(ii) WRITTEN CONSENT.—A safe
25 harbor amount, with respect to a workers’

1 compensation agreement, shall be treated
2 as the Medicare set-aside amount for such
3 agreement for purposes of clause (i) only
4 upon written consent of all parties to the
5 agreement.

6 “(iii) SAFE HARBOR AMOUNT DE-
7 FINED.—For purposes of this subsection,
8 the term ‘safe harbor amount’ means, with
9 respect to a workers’ compensation settle-
10 ment agreement, 15 percent of the total
11 settlement amount of the agreement (as
12 determined under subsection (p)(2)), ex-
13 cluding repayment of conditional payments
14 and previously settled portions of the claim
15 involved. In applying the previous sentence
16 for purposes of determining the safe har-
17 bor amount, with respect to a workers’
18 compensation agreement, if the agreement
19 includes an annuity, the cost (but not the
20 payout of the annuity) shall be included in
21 determining the total settlement amount of
22 the agreement.

23 “(iv) MANDATORY DIRECT PAYMENT
24 OF SAFE HARBOR AMOUNT.—A Medicare
25 set-aside of a worker’s compensation settle-

1 ment agreement may not be treated as a
2 qualified set-aside under clause (i) unless
3 an election is made under paragraph
4 (5)(A) to transfer to the Secretary a direct
5 payment of such set-aside.

6 “(E) SECRETARIAL AUTHORITY WITH RE-
7 SPECT TO DEEMED QUALIFIED MEDICARE SET-
8 ASIDES.—

9 “(i) DETERMINATION.—If the Sec-
10 retary determines, based on the data de-
11 scribed in clause (ii), that the provisions of
12 subparagraph (D) have caused a signifi-
13 cant negative financial impact (as specified
14 by the Chief Actuary of the Centers for
15 Medicare & Medicaid Services) on the Fed-
16 eral Hospital Insurance Trust Fund under
17 section 1817 or the Federal Supplementary
18 Medical Insurance Trust Fund under sec-
19 tion 1841, then the Secretary shall adopt
20 rules to reduce such impact by modifying
21 the amount of the percent described in
22 subparagraph (D)(iii).

23 “(ii) REQUIRED DATA.—The deter-
24 mination under clause (i) shall be based on
25 data on—

1 “(I) the projected effect of the
2 provisions described in such para-
3 graph on the Federal Hospital Insur-
4 ance Trust Fund under section 1817
5 or the Federal Supplementary Medical
6 Insurance Trust Fund under section
7 1841 during the three-year period be-
8 ginning on the date of the enactment
9 of this subsection; as compared to

10 “(II) data on the effect on such
11 trust funds of the provisions of sub-
12 section (b), as in effect during the
13 three-year period prior to such date of
14 enactment.

15 “(3) PROCESS FOR APPROVAL OF QUALIFIED
16 MEDICARE SET-ASIDES.—

17 “(A) OPTIONAL PRIOR APPROVAL BY SEC-
18 RETARY.—A party to a workers’ compensation
19 settlement agreement that includes a Medicare
20 set-aside may submit to the Secretary the set-
21 aside for approval of the set-aside as a qualified
22 Medicare set-aside. The set-aside shall be sub-
23 mitted in accordance with a procedure specified
24 by the Secretary.

“(B) NOTICE OF DETERMINATION OF APPROVAL OR DISAPPROVAL.—Not later than 60 days after the date on which the Secretary receives a submission under subparagraph (A), the Secretary shall notify in writing the parties to the workers’ compensation settlement agreement of the determination of approval or disapproval. If the determination disapproves such submission the Secretary shall include with such notification the specific reasons for the disapproval. A determination that disapproves a submission is not valid if the determination does not include a specific explanation of each deficiency of the submission.

“(4) APPEALS.—

“(A) IN GENERAL.—A party to a workers’ compensation settlement agreement that is dissatisfied with a determination under paragraph (3)(B), upon filing a request for reconsideration with the Secretary not later than 60 days after the date of notice of such determination, shall be entitled to—

“(i) reconsideration of the determination by the Secretary (with respect to such determination);

1 “(ii) a hearing before an administra-
2 tive judge thereon; and

3 “(iii) judicial review of the Secretary’s
4 final determination after such hearing.

5 “(B) DEADLINES FOR DECISIONS.—

6 “(i) RECONSIDERATIONS.—

7 “(I) IN GENERAL.—The Sec-
8 retary shall conduct and conclude a
9 reconsideration of a determination
10 under subparagraph (A)(i) and mail
11 the notice of the decision of such re-
12 consideration to the party involved by
13 not later than the last day of the 30-
14 day period beginning on the date that
15 a request for such reconsideration has
16 been timely filed.

17 “(II) APPEALS OF RECONSIDER-
18 ATIONS.—If a party to the workers’
19 compensation settlement involved is
20 dissatisfied with the Secretary’s deci-
21 sion under subclause (I) that party
22 may file an appeal within the 30-day
23 period after the date of receipt of the
24 notice of the decision under such sub-

1 clause and request a hearing before
2 an administrative law judge.

3 “(III) FAILURE BY SECRETARY
4 TO PROVIDE NOTICE.—In the case of
5 a failure by the Secretary to mail the
6 notice of the decision under subclause
7 (I) by the last day of the period de-
8 scribed in such subclause, the Sec-
9 retary shall be deemed to have ap-
10 proved the submission as submitted
11 under paragraph (3)(A).

12 “(ii) HEARINGS.—

13 “(I) IN GENERAL.—An adminis-
14 trative law judge shall conduct and
15 conclude a hearing on a decision of
16 the Secretary under clause (i) and
17 render a decision on such hearing by
18 not later than the last day of the 90-
19 day period beginning on the date that
20 a request for such hearing has been
21 timely filed.

22 “(II) JUDICIAL REVIEW.—A deci-
23 sion under subclause (I) by an admin-
24 istrative law judge constitutes a final

1 agency action and is subject to judi-
2 cial review.

3 “(III) FAILURE BY ADMINISTRA-
4 TIVE LAW JUDGE TO RENDER TIMELY
5 DECISION.—In the case of a failure by
6 an administrative law judge to render
7 a decision under subclause (I) by the
8 last day of the period described in
9 such subclause, the party requesting
10 the hearing may seek judicial review
11 of the decision under clause (i), not-
12 withstanding any requirements for a
13 hearing for purposes of the party’s
14 right to such judicial review.

15 “(5) ADMINISTRATION OF MEDICARE SET-ASIDE
16 PROVISIONS; PROTECTION FROM CERTAIN LIABIL-
17 ITY.—

18 “(A) OPTIONAL DIRECT PAYMENT OF
19 MEDICARE SET-ASIDE AMOUNT.—

20 “(i) ELECTION FOR DIRECT PAYMENT
21 OF MEDICARE SET-ASIDE.—With respect to
22 a claim for which a workers’ compensation
23 settlement agreement is established, a
24 workers’ compensation claimant or work-
25 ers’ compensation payer who is party to

1 the agreement may elect, but is not re-
2 quired, to transfer to the Secretary a di-
3 rect payment of the qualified Medicare set-
4 aside. With respect to a qualified Medicare
5 set-aside paid directly to the Secretary, the
6 parties involved may calculate the Medi-
7 care set-aside amount of such set-aside
8 using any of the following methods:

9 “(I) In the case of any Medicare
10 set-aside of a compromise settlement
11 agreement under paragraph (2)(C)(ii),
12 the amount calculated in accordance
13 with such paragraph.

14 “(II) In the case of any Medicare
15 set-aside, the amount based upon the
16 payment amount for items and serv-
17 ices under the workers’ compensation
18 fee schedule (effective as of the date
19 of the agreement) applicable to the
20 workers’ compensation law or plan in-
21 volved, in accordance with paragraph
22 (2)(C)(i)(I).

23 “(III) In the case of any Medi-
24 care set-aside, the payment amount
25 applicable to the items and services

1 under this title as in effect on the ef-
2 fective date of the agreement.

3 Such transfer shall be in accordance with
4 a procedure established by the Secretary
5 and shall be made only upon written con-
6 sent of the other party to the agreement.

7 “(ii) ELECTION SATISFYING LIABIL-
8 ITY.—An election made under clause (i),
9 with respect to a qualified Medicare set-
10 aside shall satisfy any payment, in relation
11 to the underlying claim of the related
12 workers’ compensation settlement agree-
13 ment, required under subsection (b)(2) to
14 be made by the claimant or payer to the
15 Secretary. The Secretary shall have no fur-
16 ther recourse, directly or indirectly, under
17 this title with respect to such agreement.

18 “(B) REQUIREMENT FOR TIMELY NOTICE
19 OF MEDICARE REPAYMENTS OWED BY WORK-
20 ERS’ COMPENSATION CLAIMANT OR PAYER TO
21 SECRETARY.—

22 “(i) IN GENERAL.—Not later than 90
23 days after the date on which the Secretary
24 receives a request from a workers’ com-
25 pensation claimant or workers’ compensa-

1 tion payer for documentation of any condi-
2 tional payment made under subsection
3 (b)(2)(B)(i) on behalf of the claimant, the
4 Secretary shall provide to the claimant or
5 payer such documentation. Such docu-
6 mentation shall be sufficient for the claim-
7 ant or payer to make a reasonable deter-
8 mination whether such a payment was for
9 an item or service furnished in connection
10 with the claimant's work related injury or
11 illness involved. The claimant or payer may
12 rely on the documentation provided under
13 this clause in making such determination.
14 Payment of the amount of the conditional
15 payment, after deducting from such
16 amount any procurement costs involved
17 and any costs for unrelated and inappro-
18 priate items or services, shall discharge
19 further liability with respect to the condi-
20 tional payment.

21 “(ii) LIABILITY FOR REIMBURSE-
22 MENTS RELATED TO REQUESTED INFOR-
23 MATION.—If the Secretary fails to provide
24 information in accordance with clause (i),
25 then neither the claimant nor the payer de-

1 scribed in such clause shall be liable for
2 any reimbursement under subsection
3 (b)(2)(B) with respect to the conditional
4 payment for which information was re-
5 quested under such clause.

6 “(C) PROTECTION FROM CERTAIN LIABIL-
7 ITY.—

8 “(i) LIABILITY FOR MEDICARE SET-
9 ASIDE PAYMENT GREATER THAN PAYMENT
10 UNDER WORKERS’ COMPENSATION LAW.—

11 No workers’ compensation claimant, work-
12 ers’ compensation payer, employer, admin-
13 istrator of the Medicare set-aside, legal
14 representative of the claimant, payer, em-
15 ployer, or administrator, or any other
16 party related to the claimant, payer, em-
17 ployer, or administrator shall be liable for
18 any payment amount established under a
19 Medicare set-aside for an item or service
20 provided to the claimant that is greater
21 than the payment amount for the item or
22 service established under the workers’ com-
23 pensation fee schedule (or in the absence
24 of such schedule, the medical reimburse-
25 ment rate) under the compensation law or

1 plan of the jurisdiction where the agree-
2 ment will be effective.

3 “(ii) LIABILITY FOR PROVIDER
4 CHARGES GREATER THAN PAYMENT
5 UNDER WORKERS’ COMPENSATION AGREE-
6 MENT.—With respect to a workers’ com-
7 pensation settlement agreement, a provider
8 may not bill (or collect any amount from)
9 the workers’ compensation claimant, work-
10 ers’ compensation payer, employer, admin-
11 istrator of the Medicare set-aside, legal
12 representative of the claimant, payer, em-
13 ployer, or administrator, or any other
14 party related to the claimant, payer, em-
15 ployer, or administrator an amount for
16 items and services provided to the claimant
17 that is greater than the payment rate for
18 such items and services established under
19 the Medicare set-aside of the agreement.
20 No person is liable for payment of any
21 amounts billed for an item or service in
22 violation of the previous sentence. If a pro-
23 vider willfully bills (or collects an amount)
24 for such an item or service in violation of
25 such sentence, the Secretary may apply

1 sanctions against the provider in accord-
2 ance with section 1842(j)(2) in the same
3 manner as such section applies with re-
4 spect to a physician. Paragraph (4) of sec-
5 tion 1842(j) shall apply under this clause
6 in the same manner as such paragraph ap-
7 plies under such section.

8 “(6) TREATMENT OF STATE WORKERS’ COM-
9 PENSATION LAW.—For purposes of this subsection
10 and subsection (p), if a workers’ compensation set-
11 tlement agreement is accepted, reviewed, approved,
12 or otherwise finalized in accordance with the work-
13 ers’ compensation law of the jurisdiction in which
14 such agreement will be effective, such acceptance, re-
15 view, approval, or other finalization shall be deemed
16 conclusive as to any and all matters within the juris-
17 diction of the workers’ compensation law, including
18 the determination of reasonableness of the settle-
19 ment value; any allocations of settlement funds; the
20 projection of future indemnity or medical benefits
21 that may be payable under the State workers’ com-
22 pensation law; and, in the case of a compromise
23 agreement, the total amount that could have been
24 payable for a claim which is the subject of such
25 agreement in accordance with paragraph (2)(C)(ii).

1 A determination made by applicable authority for a
 2 jurisdiction that a workers' compensation settlement
 3 agreement is in accordance with the workers' com-
 4 pensation law of the jurisdiction shall not be subject
 5 to review by the Secretary.”.

6 (c) CONFORMING AMENDMENTS.—Subsection (b) of
 7 such section is further amended—

8 (1) in paragraph (2)(B)(ii), by striking “A pri-
 9 mary plan” and inserting “Subject to subsections
 10 (p) and (q), a primary plan”;

11 (2) in paragraph (2)(B)(iii)—

12 (A) in the first sentence, by striking “In
 13 order to recover payment” and inserting “Sub-
 14 ject to subsection (q), in order to recover pay-
 15 ment”; and

16 (B) in the third sentence, by striking “In
 17 addition” and inserting “Subject to subsection
 18 (q), in addition”; and

19 (3) in paragraph (3)(A), by striking “There is
 20 established a private cause of action” and inserting
 21 “Subject to subsection (q), there is established a pri-
 22 vate cause of action”.

23 (d) MODERNIZING TERMINOLOGY FOR PURPOSES OF
 24 MEDICARE SECONDARY PAYER PROVISIONS.—Subsection
 25 (b)(2)(A) of such section is amended by striking “work-

1 men’s compensation law or plan” and inserting “workers’
2 compensation law or plan” each place it appears.

3 **SEC. 3. LIMITATION ON LIABILITY.**

4 The parties to a workers’ compensation settlement
5 agreement which met the provisions of section 1862(b) of
6 the Social Security Act (42 U.S.C. 1395y (b)) on the effec-
7 tive date of settlement shall be accepted as meeting the
8 requirements of such section notwithstanding changes in
9 law, regulations, or administrative interpretation of such
10 provisions after the effective date of such settlement.
11 Nothing in section 1862(b) of the Social Security Act (42
12 U.S.C. 1395y (b)) shall authorize the Secretary of Health
13 and Human Services to impose liability that is additional
14 to the liability in effect on the date of the enactment of
15 this Act with respect to a workers’ compensation settle-
16 ment agreement the effective date of which is before such
17 date of enactment, except in the case of fraud.

18 **SEC. 4. EFFECTIVE DATE.**

19 The amendments made by this Act shall apply to a
20 workers’ compensation settlement agreement with an ef-
21 fective date on or after the date of the enactment of this
22 Act.

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